

DATE 10-21-93
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STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS,
AND MOBILE HOMES

IN RE: PETITION FOR DECLARATORY STATEMENT

INNISBROOK CONDOMINIUM
ASSOCIATION, INC.

Docket No. DS91265

DECLARATORY STATEMENT

This Declaratory Statement is rendered by the State of Florida, Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes, by and through its undersigned Division Director, pursuant to §§ 120.565 and 718.501, Fla. Stat.

FINDINGS OF FACT

1. A Petition for Declaratory Statement was filed with the Division on December 4, 1991, by Innisbrook Condominium Association, Inc. Notice of the Petition was filed in the Florida Administrative Weekly on January 10, 1992. No requests to intervene have been received.

2. Petitioner is a condominium association which currently operates twenty eight (28) separate condominiums, collectively known as Innisbrook Condominiums, in Tarpon Springs, Pinellas County, Florida. The declaration of condominium for Innisbrook Condominium No. 1 was recorded on October 1, 1970. The declaration of condominium for Innisbrook Condominium No. 28 was recorded on or about December 5, 1985.

3. The Petitioner seeks a declaratory statement on the issue of whether it is required under § 718.111(12)(a)11, Fla. Stat., to maintain separate accounting records for the twenty eight

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condominiums that it operates. Innisbrook Condominium Association, Inc. does not now, and never has maintained separate accounting records for each condominium that it operates.

4. The declarations of condominium for Condominiums No. 1 through 10 were recorded between October 1, 1970 and February 14, 1972. Section 3 of each declaration provides:

This condominium apartment building is one of a series which may be constructed under a common plan known as Innisbrook Condominiums and being a part of Innisbrook Stage I Development. Each building or buildings submitted to condominiums shall constitute a separate condominium property, but all of the condominiums in Stage I Development shall be operated and governed by the same association to be known as "Innisbrook Condominium Association No. 1, Inc." [Emphasis added.]

5. The declarations of condominium for Condominiums Nos. 11 through 23 were recorded between April 13, 1972 and September 19, 1974. Section 3 of each declaration provides:

This condominium apartment building is one of a series which may be constructed under a common plan known as Innisbrook Condominiums and being a part of Innisbrook Stage II Development. Each building or buildings submitted to condominiums shall constitute a separate condominium property, but all of the condominiums in Stage II Development shall be operated and governed by the same association to be known as "Innisbrook Condominium Association No. 2, Inc." [Emphasis added.]

6. The declarations of condominium for Condominiums Nos. 24 and 25 were recorded on December 26, 1974 and December 17, 1976, respectively. Section 3 of these declarations provides:

This condominium apartment building is one of a series which may be constructed under a common plan known as Innisbrook Condominiums and being a part of Innisbrook Stage II

Development. Each building or buildings submitted to condominiums shall constitute a separate condominium property, but all of the condominiums in Stage II Development shall be operated and governed by the same association to be known as "Innisbrook Condominium Association, Inc." and its successors. [Emphasis added.]

7. The declarations of condominium for Condominiums Nos. 26 through 28 were recorded between July 16, 1980 and on or about December 5, 1985. Section 3 of each declaration provides:

This condominium apartment building is one of a series which may be constructed under a common plan known as Innisbrook Condominiums and being a part of Innisbrook Stage III Development. Each building or buildings submitted to condominiums shall constitute a separate condominium property, but all of the condominiums in Stage III Development shall be operated and governed by the same association to be known as "Innisbrook Condominium Association, Inc." and its successors. [Emphasis added.]

8. The declarations of condominium for all twenty eight condominiums contain virtually identical provisions regarding operational aspects of the separate condominiums. For example, all of the declarations contain sections 4.6 and 6.1 which state that each parcel owner shall be liable for a proportionate share of the common expenses of the condominium and shall share in the common surplus. No provision in the declarations suggests that a unit owner of one condominium will be responsible for the expenses incurred, or surplus amassed, by any other condominium. Nowhere in the declarations is there any statement either expressly or impliedly providing for consolidated financial operations.

9. Similarly, the by-laws of all of the condominiums are virtually identical. Section 6.2 of each condominium's by-laws provides that the board of directors "shall adopt a budget for each fiscal year that shall include the estimated funds required to defray the common expenses and to provide and maintain funds for the foregoing accounts and reserves . . ." Nothing in the by-laws suggests any intent to consolidate the financial operations of the condominiums at Inniskrook.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over this matter pursuant to §§ 120.565 and 718.501, Fla. Stat.

2. Petitioner, Innisbrook Condominium Association, Inc., is an "association" within the meaning of § 718.103(2), Fla. Stat. Innisbrook Condominiums Nos. 1 through 28 are individual "condominiums" within the meaning of § 718.103(10), Fla. Stat.

3. Section 718.111(12)(a)11, Fla. Stat., requires a condominium association that operates more than one condominium to maintain as part of the official records of the association "accounting records for the association and separate accounting records for each condominium which the association operates . . ." This provision was first enacted in 1977 as § 718.111(7), Fla. Stat.

4. An exception to the above-stated requirement is contained in § 718.111(6), Fla. Stat., which provides:

Notwithstanding any provision of this chapter, an association may operate residential condominiums in a phase project initially created pursuant to former § 711.64 and may

continue to so operate such project as though it were a single condominium for purposes of financial matters, including budgets, assessments, accounting, recordkeeping, and similar matters, if provision is made for such consolidated operation in the applicable declarations of each such condominium as initially recorded or in the bylaws as initially adopted. [Emphasis added.]

Section 711.64, Fla. Stat., the statute referenced in § 718.111(6), became effective on October 1, 1974.

5. Section 718.111(6), Fla. Stat., states a two prong test that must be met if an association seeks to consolidate the financial operations of multiple condominiums. One requirement is that provision must be made in the declarations, as originally recorded,¹ for consolidated financial operation of the various condominiums. In Chmil v. Mediterranean Manors Association, Inc., 516 So. 2d 1109 (Fla. 2d DCA 1987), the court examined language in the various declarations providing that "each building . . . shall constitute a separate condominium property, but all of the condominiums in this development shall be operated and governed by the same association" The court concluded that such language could not be interpreted as providing for "consolidated operation" in terms of financial and accounting records and budgets.

¹ Declarations which are amended to provide for consolidated financial operations do not satisfy the requirements of § 718.111(6), Fla. Stat. In Re: Petition for Declaratory Statement, William A. Miller (October 19, 1983), aff'd sub nom., Normandy Homeowners Association, Inc. v. Division of Florida Land Sales and Condominiums, Dept. of Business Regulation, (Fla. 2d DCA 1984).

6. The language contained in the declarations of all twenty eight Innisbrook condominiums is virtually identical to the language considered in Mediterranean Manors. The Innisbrook declarations provide that each building submitted to condominium "shall constitute a separate condominium property" and that it shall be "operated and governed by" the same association as are other condominiums in the particular development stage. Accord: In Re: Petition For Declaratory Statement, Costa Del Sol Association, Inc., (October 27, 1987) (association could not operate under the exemption contained in § 718.111(6), Fla. Stat., because declarations did not contain any provision for consolidated financial operations).

7. The other prong of the test set forth in § 718.111(6), Fla. Stat., requires the condominiums to have been created as a "phase project initially created pursuant to § 711.64, Fla. Stat." This means that the condominiums must have been created after October 1, 1974, the effective date of § 711.64. Chmil v. Mediterranean Manors Association, supra; Eden Isles Condominium Association v. Division of Florida Land Sales and Condominiums, 386 So.2d 1325 (Fla 3d DCA 1980). As the declarations for Condominiums Nos. 1 through 23 at Innisbrook were recorded before October 1, 1974, these condominiums were not created pursuant to § 711.64.²

² It could be argued that Condominiums Nos. 24 through 28 are at least eligible to be considered a phase condominium created pursuant to § 711.64, as their declarations were recorded after October 1, 1974. However, as it already has been determined that none of the declarations contain any provision for consolidated financial operations, it is not necessary to consider whether a these five condominiums meet this part of the § 718.111(6) test.

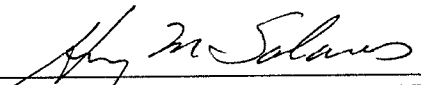
8. The Association argues that retroactive application of § 718.111(12)(a)11, Fla. Stat. (formerly § 718.111(7)), which was not enacted until January 1, 1977, constitutes an unconstitutional impairment of contract. This argument is rejected for the reasons articulated in Condominium Association of LaMer Estates, Inc. v. Semel, 610 So.2d 569 (Fla. 4th DCA 1992). As the association has not pointed to "a specific right expressed in the documents which permits the consolidation of the budgets and . . . the consolidation of expenses between the condominiums," no contract right existed that could be impaired. Moreover, this agency has no authority to decide the constitutional issue.

CONCLUSION

Based on the foregoing findings of fact and conclusions of law, the Division declares that Innisbrook Condominium Association is required to maintain separate budgets and financial records for each condominium it operates.

DONE AND ORDERED, this 21st day of October, 1993.




HENRY M. SOLARES, DIRECTOR
Division of Florida Land Sales,
Condominiums and Mobile Homes
Department of Business and
Professional Regulation
State of Florida

RIGHT TO APPEAL

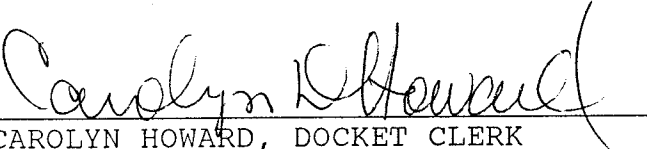
THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER PURSUANT TO THE FLORIDA RULES OF APPELLATE PROCEDURE AND SECTION 120.68 FLORIDA STATUTES, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(D), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY THE APPROPRIATE FILING FEES AND WITH CAROLYN HOWARD, DOCKET CLERK FOR THE DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent by U.S. mail, postage prepaid to:

Laura J. Rayburn, P.A.
1968 Bayshore Blvd.
Dunedin, Florida 34698

This the 21st day of October, 1993.


CAROLYN HOWARD, DOCKET CLERK

Copies furnished to:

Faye Mayberry, Chief
Bureau of Condominiums

Jeanne M. L. Player
Assistant General Counsel